IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.1397 of 2002

Between:

M.lakshmana Rao, S/o Veeranna, 43 years,
Huzurabad Depot, R/o H.No.2-4-1614, Ashok Colony, Hanamkonda,
Warangal District.

...PETITIONER

AND

1. The Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District.
2. The Depot Manager, A.P.State Road Transport Corporation, Huzurabad Depot, Karimnagar District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus call for the records relating to the impugned order dated 31.08.2001 made in I.D.No.128/97, on the file of Industrial Tribunal cum Labour Court, Godhavarikhani, Karimnagar District and set aside the same, is arbitrary, unjust and unreasonable and consequently direct the respondents to reinstate the petitioner into service as conductor with continuity of service by paying all attendant benefits including back wages from date of removal i.e.15.07.1996.

Counsel for the Petitioner: MR.A.K.JAYA PRAKASH RAO

Counsel for the Respondent No.1: G.P. FOR LABOUR.

Counsel for the Respondent NO.2: SMT.G.JYOTHI KIRAN

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.1397 of 2002

ORDER:

Heard Sri A.K.Jaya Prakash Rao, the learned counsel appearing for the petitioner, the learned Government Pleader for Labour appearing for the first respondent and Smt.P.Rajani Reddy, the learned Standing Counsel appearing for the second respondent.

The petitioner herein, who was working as Conductor with the second respondent, filed this Writ Petition, *inter alia*, seeking a writ of mandamus challenging the nil award dated 31.08.2001 passed in I.D.No.128 of 1997 on the file of the first respondent herein as illegal and bad.

The case of the petitioner is that initially he was appointed as a security guard in the year 1976 and later on appointed as a conductor. However, while conducting the bus on 27.11.1995 on the

route of Raghavareddi Pet, a surprise check was made at 22.15 hours in between stage Nos.4 to 5 on the ground that there were certain violations and irregularities committed by the petitioner. An enquiry was conducted and ultimately he was

removed from service as per the orders dated 15.07.1996. Thereafter, after exercising the remedies available in the second respondent-Corporation regulations, the petitioner sought reference of dispute under Section 2 (1) (2) of the Industrial Disputes Act, 1947 ('the Act' for brevity). It was taken up as I.D.No.128 of 1997 on the file of the first respondent herein. After conducting trial, a nil award was passed against which the petitioner filed Writ Petition No.5487 of 2001. The same was disposed of as per the orders dated 05.07.2001 where under the Labour Court was directed to reconsider the case afresh under Section 11-A of the Act having regard to the fact that no money has been collected from the petitioner. Thereafter the matter was again taken up and the impugned award dated 31.08.2001 was passed by the first respondent once again reiterating the direction as valid and also holding that it is not a fit case for exercising discretion under Section 11-A of the Act. Hence, the Writ Petition.

Sri A.K.Jaya Prakash Rao, the learned counsel appearing for the petitioner submitted that having regard to the specific directions given by this Court in the earlier Writ Petition, the case was considered in proper perspective, especially with regard to the exercising of discretion under Section 11-A of the Act. It is to be noticed that there is no allegation of misappropriation of the funds or any collection of the money and

non-issuance of the tickets. It was pointed out that it was a sudden check where the passengers suddenly boarded and asked to stop the bus and therefore, the petitioner cannot be claimed for the alleged non-issuance of the tickets.

On the other hand, the learned Standing Counsel, repelling the above said

contention, submitted that having regard to the discretion already exercised by the first respondent, it is not open to consider the same, more so, with regard to the nature of the allegations found against the petitioner.

Having regard to the submissions made and on perusal of the material available on record, the question which arise for consideration is as to whether under the facts and circumstances, the first respondent was right in passing the award and in showing any indulgence by way of discretion under Section 11-A of the Act.

There is no dispute with regard to the petitioner's employment with the second respondent as a conductor at the relevant point of time and on certain allegations which were found during the course of the surprise check made, six charges were framed against the petitioner and after conducting enquiry, he was removed from the service. It is to be noted that the allegations as can be seen from all the charges do not reflect any collection of fare and non-issuance of the tickets but ultimately the need is only with regard to the non-issuance of the tickets and the passengers were found without tickets. As already directed by this Court in the earlier Writ Petition, it is that aspect which has to be determined while exercising the discretion under Section 11-A of the Act, which necessarily falls within a more pragmatic angle, rather than giving any technical approach. Here is a case where the petitioner collected no amount nor there is any misappropriation of such funds. Mere non-issuance of the tickets cannot be said to be very serious except such allegation is made after collecting money.

On a reading of the award it is seen that no other reason is seen in the award as to why discretion under Section 11-A of the Act is exercised and it is based only upon the findings of charges framed. In the circumstances, it is to be held that the second respondent was not right in giving any discretion in favour of the petitioner under the aforesaid provision.

The Writ Petition is allowed and the impugned award dated 31.08.2001 in I.D.No.128 of 1997 is modified to the effect that though the order of suspension is confirmed, however, the second respondent is directed to consider the petitioner's case for fresh appointment. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. It is needless to mention that the second respondent shall treat the entire period as if the petitioner is in service though on a notional basis for the purpose of calculating any pension benefits to which he is entitled to at the age of superannuation. No costs.

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(B.PRAKASH RAO, J)

15th March 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the 15th day of March Two thousand and five.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District.
2. The Depot Manager, A.P.State Road Transport Corporation, Huzurabad Depot, Karimnagar District.
3. Two CD copies.
4. Two C.Cs. to the G.P. for Labour, High Court Buildings, Hyderabad (OUT).